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9 Southern California Gas Company

10 UNITED STATES DISTRICT COURT
11 SOUTHERN DISTRICT OF CALIFORNIA

12 SOUTHERN CALIFORNIA GAS
13 COMPANY, a California corporation,

14 Plaintiff,

15 v.

16 SYNTELLECT, INC., a Delaware
17 corporation,

18 Defendant.

Case No.: 08-CV-0941 BEN NLS

**PLAINTIFF SOUTHERN
CALIFORNIA GAS COMPANY'S
REPLY TO COUNTERCLAIM OF
DEFENDANT SYNTELLECT, INC.**

1 Plaintiff Southern California Gas Company ("SoCal Gas") replies to the
2 Counterclaim of defendant Syntellect, Inc. ("Syntellect") as follows in paragraphs
3 numbered to correspond to the paragraphs of the Counterclaim:

4 56. SoCal Gas admits that Syntellect has incorporated paragraphs 1-53 of its
5 Answer into its Counterclaim. As to Syntellect's admissions in paragraphs 1-43, SoCal
6 Gas admits their truth. As to Syntellect's denials in paragraphs 1-43, SoCal Gas denies
7 their truth. As to the particular factual averments in certain of paragraphs 1-53, they
8 are treated in turn by paragraph number:

9 (1.) SoCal Gas denies that the Complaint does not target the Syntellect
10 Interactive Voice Response component of SoCal Gas's call
11 processing system.

12 (14.) SoCal Gas currently does not have sufficient knowledge or
13 information to form a belief as to the truth of the allegation in this
14 paragraph that the Morganstein patents were assigned to Aspect
15 Communications in 1997, and therefore denies the same.

16 (18.) SoCal Gas currently does not have sufficient knowledge or
17 information to form a belief as to the truth of the allegation in this
18 paragraph that the Morganstein patents were assigned to Aspect
19 Communications in 1997, and therefore denies the same.

20 (44.) SoCal Gas denies that Syntellect has accurately characterized
21 Paragraph 20.2 of the Agreement (Exhibit 2 to the Complaint), and
22 affirmatively states that the Agreement speaks for itself. SoCal Gas
23 denies that Syntellect's indemnification obligation is triggered only
24 if Syntellect actually infringes or is alleged to have infringed a
25 patent, and affirmatively states that Syntellect's indemnification
26 obligation is set forth in full in the Agreement but generally is
27 triggered by any claim or liability of any kind whatsoever arising
28 from Syntellect's actual or alleged infringement of a patent.

1 (45.) SoCal Gas admits that the complaint filed by RAKTL does not
2 specifically identify Syntellect, but denies that the call processing
3 system to which the complaint refers does not refer to Syntellect's
4 IVR component.

5 (46.) Admitted.

6 (47.) Denied.

7 (48.) Admitted.

8 (49.) Syntellect does not explain or deny the term "did nothing" in this
9 paragraph, and thus SoCal Gas currently does not have sufficient
10 knowledge or information to form a belief as to the truth of the
11 allegations in this paragraph and therefore denies the same, except
12 that SoCal Gas admits that it demanded indemnification from
13 Syntellect on August 21, 2007.

14 (50.) SoCal Gas admits that it filed its Complaint on or about April 21,
15 2008 based upon Syntellect's rejection of SoCal Gas's demand for
16 indemnification, and SoCal Gas affirmatively states that the
17 Complaint is also based upon Syntellect's breach of its duty to
18 defend. SoCal Gas admits that the Complaint was filed more than
19 five years after Syntellect rejected SoCal Gas's initial
20 indemnification demand, but denies that it was filed more than five
21 years after its most recent indemnification demand.

22 (51.) SoCal Gas admits that its claim for reimbursement of attorneys'
23 fees in defending against Katz's claims is based on paragraph 20.3
24 of the Agreement, and SoCal Gas affirmatively states that its claim
25 for attorneys' fees is based upon paragraph 20.2 of the Agreement
26 as well. SoCal Gas admits that Syntellect first rejected its
27 obligations in April 2003, did not assume the defense, and did not
28 reimburse fees on a monthly basis. SoCal Gas admits that an

1 alleged breach occurred in April 2003, but affirmatively states that
2 Syntellect has had a continuing obligation under the Agreement,
3 and thus has engaged in a continuous breach from April 2003 to the
4 present.

5 (52.) Denied.

6 (53.) Denied.

7 57. Admitted.

8 58. Admitted.

9 59. Admitted.

10 60. Admitted.

11 61. SoCal Gas admits that Syntellect is seeking a declaration as alleged, but
12 denies that Syntellect is not obligated under the Agreement to indemnify SoCal Gas
13 and to reimburse SoCal Gas for its attorneys' fees.

14 62. SoCal Gas admits that Syntellect is seeking a declaration as alleged, but
15 denies that SoCal Gas's claims are barred by laches, estoppel, or the statute of
16 limitations.

17
18 **AFFIRMATIVE DEFENSES**

19 Without assuming the burden to prove that which properly falls on Syntellect,
20 SoCal Gas pleads the following affirmative defenses.

21
22 **FIRST AFFIRMATIVE DEFENSE**

23 **(Failure to State a Claim)**

24 The Counterclaim fails to set forth facts sufficient to state a claim upon which
25 relief can be granted.

1 **SECOND AFFIRMATIVE DEFENSE**

2 **(Unclean Hands)**

3 SoCal Gas is informed and believes, and on that basis alleges that, by virtue of
4 Syntellect's own acts and conduct, Syntellect's Counterclaim is barred, in whole or in
5 part, by the doctrine of unclean hands.

6 **THIRD AFFIRMATIVE DEFENSE**

7 **(Equitable Tolling)**

8 Syntellect's Counterclaim is barred, in whole or in part, by the doctrine of
9 equitable tolling.

10 **FOURTH AFFIRMATIVE DEFENSE**

11 **(Additional Defenses)**

12 SoCal Gas reserves the right to allege additional defenses as they become known
13 during discovery, and to amend its Reply accordingly.

14 **PRAYER**

15 WHEREFORE, SoCal Gas prays for judgment as follows:

- 16 1. That Syntellect takes nothing by the Counterclaim, and that judgment be
17 entered against Syntellect and in favor of SoCal Gas;
18 2. That SoCal Gas be awarded costs of suit incurred in defending the
19 Counterclaim, including reasonable attorneys' fees; and
20 3. For such other and further relief as this Court may deem just and proper.
21

22
23 Dated: June 26, 2008

WILLENKEN WILSON LOH & LIEB, LLP

24
25 /s/ William A. Delgado

26 William A. Delgado
27 Attorney for Plaintiff
28 Southern California Gas Company

CERTIFICATE OF SERVICE

I hereby certify that on June 26, 2008, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the e-mail addresses associated with this case.

I also sent a copy by U.S. Mail, first class, of the foregoing document to counsel for Defendant at the following address:

Sean M. Sherlock, Esq.
Snell & Wilmer LLP
600 Anton Boulevard, Suite 1400
Costa Mesa, CA 92626

DATED: June 26, 2008

WILLENKEN WILSON LOH & LIEB LLP

By: /s William A. Delgado

William A. Delgado

Attorneys for Plaintiff